

WATER RESOURCE IMPROVEMENT TIFA

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Senate Bill 47 (Substitute H-1)

Sponsor: Sen. Jason E. Allen

House Committee: New Economy and Quality of Life

Senate Committee: Natural Resources and Environmental Affairs

First Analysis (2-8-08)

BRIEF SUMMARY: The bill would create the "Water Resource Improvement Tax Increment Finance Authority Act" to authorize a municipality (a city, village, or township) to establish a water resource improvement tax increment finance authority that promotes the improvement of, and access to, inland lakes.

FISCAL IMPACT: This bill would have no fiscal impact on the State of Michigan. To the extent that the bill's provisions are implemented by local units, the amount of increase in revenues and expenditures to participating local units of government is indeterminate. Because the bill excludes the tax increment revenues of the state education tax and local or intermediate school district taxes from being captured by the local water improvement tax increment finance authority, there would be no fiscal impact to the School Aid Fund or local and intermediate school districts.

THE APPARENT PROBLEM:

Tax increment financing (TIF) and similar economic development tools are designed to "capture" the tax revenue from the incremental growth in property value within a district, and then to use that revenue to finance a variety of public improvements in that area. TIF programs generally have been used in commercial and industrial areas to foster economic development in a community.

Some local governments and private lake associations—for example, the Long Lake Association located in Grand Traverse County—have struggled to fund efforts to control invasive species in their inland lakes, as well as to make necessary improvements to sewer systems near them.

According to Michigan Sea Grant, failing on-site waste disposal systems (most frequently septic tanks) increase the nutrient load in inland lakes, thus increasing the number, size, and duration of algal blooms. When those algae die, they sink to the lake bottom where they are decomposed by bacteria that use oxygen. Fish kills can result (especially when the lake is covered with ice), and in some instances the toxins released (such as microcystin) have been associated with animal deaths and liver damage in humans.

It has been suggested that municipalities be authorized to designate tax increment finance districts within a mile of their inland lake shorelines, and then use the captured tax increment revenue to finance improvements to local water resources.

THE CONTENT OF THE BILL:

The bill would create the "Water Resource Improvement Tax Increment Finance Authority Act" to authorize a municipality (a city, village, or township) to establish by ordinance a water resource improvement tax increment finance authority.

The aim of a tax increment finance authority (TIFA) created under the bill would be to promote water resource improvement or access to inland lakes, or both, in a water resource district.

A TIFA typically involves the creation of a specially designated district in which the future increment in tax revenue from property taxes is captured for use in financing projects within the district (often by supporting the issuance of bonds) for purposes described in a development plan and program. The new TIFA would be similar in structure and operation as TIFAs created in existing statutes, including the Downtown Development Authority Act, the Local Development Financing Authority Act, and the Tax Increment Financing Authority Act.

The term "water resource improvement" would mean enhancement of water quality and water-dependent natural resources, including the elimination of the causes and proliferation of aquatic nuisance species (but not by chemical treatment of water); sewer systems that service existing structures that have failing on-site disposal systems; and storm water systems that service existing infrastructure.

A "water resource improvement district" would mean an inland body of water and land up to one mile of the shoreland of the inland lake. "Inland lake" would mean a natural or artificial lake, pond, or impoundment. The term would not include the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area smaller than five acres.

In brief, the bill would:

- Provide for the supervision and control of an authority by a board that included the municipality's chief executive officer and five to nine appointed members.
- Specify an authority board's powers, including the implementation of a development plan to improve water resource quality.
- Provide for the financing of authority activities, including borrowing money and issuing bonds.
- Allow an authority to prepare and submit to the municipality's governing body a TIF plan, which would have to include a development plan for the authority's development area.
- Allow an authority to sell bonds to finance a TIF plan's development program.
- Specify requirements for a development plan.
- Specify requirements for an authority's budget approval process.
- Require the dissolution of an authority that had completed its purpose.
- Authorize the State Tax Commission to institute proceedings to enforce the proposed act and to promulgate rules for its administration.
- Prohibit the capture of state and local school taxes.

- Allow the governing body in a taxing jurisdiction whose property taxes would otherwise be subject to capture to exempt its taxes from capture by adopting a resolution and allow public library taxes to be exempt from capture at the request of a library board.
- Prohibit a municipality from creating an authority or expanding the boundaries of a development plan after December 31, 2011.

DETAILED SUMMARY:

Establishment of TIF Authority

If the governing body of a municipality determined that it was necessary for the best interests of the public to promote water resource improvement and/or access to inland lakes in a water resource improvement district, the governing body could by resolution declare its intention to create and provide for the operation of an authority within the boundaries of a water resource improvement district. A municipality could establish multiple authorities, but a parcel of property could not be included in more than one authority.

In the resolution of intent, the governing body would have to set a date for a public hearing on the adoption of a proposed ordinance creating the authority and designating the boundaries of the development area. The bill specifies notice requirements for a public hearing, including published notice in a newspaper of general circulation in the municipality, mailed notice to the property taxpayers of record in the proposed development area, and mailed notice to the governing body of each taxing jurisdiction levying taxes that would be subject to capture if the authority were established and a TIF plan were approved.

A citizen, taxpayer, or property owner of the municipality or an official from a taxing jurisdiction with millage that would be subject to capture would have the right to be heard in regard to the establishment of the authority and the boundaries of the proposed development area. The municipality's governing body could not incorporate into the development area land not included in the description contained in the notice, but could eliminate described land from the development area in the final determination of the boundaries.

At least 60 days after the public hearing, if the governing body intended to proceed with the establishment of the authority, it would have to adopt, by majority vote of its members, an ordinance establishing the authority and designating the boundaries of the development area within which the authority would exercise its powers. The adoption of the ordinance would be subject to any applicable statutory or charter provisions in respect to the approval or disapproval by the chief executive or other officer of the municipality and the adoption of an ordinance over a veto. The ordinance would have to be filed with the Secretary of State promptly after its adoption and would have to be published at least once in a newspaper of general circulation in the municipality.

The governing body could alter or amend the boundaries of the development area to include or exclude land from it in the same manner as adopting the ordinance creating the authority.

A municipality that had created an authority could enter into an agreement with an adjoining municipality that had created an authority jointly to operate and administer the authorities under an inter-local agreement under the Urban Cooperation Act.

If a development area were part of an area annexed to or consolidated with another municipality, the authority managing that development area would become an authority of the annexing or consolidated municipality. Obligations of that authority incurred under a development or tax increment plan, agreements related to a development or tax increment plan, and bonds issued under the proposed act would remain in effect following the annexation or consolidation.

Authority Board

An authority would be under the supervision and control of a board consisting of the chief executive officer (mayor, city manager, president or village manager, or township supervisor) of the municipality, or a designee, and not less than five or more than nine members as determined by the municipality's governing body. Members would have to be appointed by the chief executive officer, subject to approval by the governing body. A majority of the members would have to be people having an ownership or business interest in property located in the development area. At least one member would have to be a resident of the development area or of an area within a half-mile of any part of the development area.

Board members would serve staggered terms and vacancies would be filled by appointment of the chief executive officer. After the initial appointments, members would have to serve for four-year terms. Board members would have to serve without compensation, but would be reimbursed for actual and necessary expenses. The board would have to elect a chairperson. The board would be subject to the Open Meetings and the Freedom of Information acts.

The board could employ and fix the compensation of a director, subject to the governing body's approval. The director would serve at the pleasure of the board. A board member would not be eligible to hold the position of director. Before beginning his or her duties, the director would have to post a bond payable to the authority for its use and benefit, approved by the board, and filed with the municipal clerk. The premium on the bond would be considered an operating expense of the authority, payable from funds available to it for expenses of operation.

The director would be the chief executive officer of the authority. Additionally, the board could employ and fix the compensation of a treasurer and secretary and could retain legal counsel. The board could also employ other personnel it considered necessary. Authority employees would be eligible to participate in municipal retirement and insurance programs of the municipality as if they were civil service employees, except that they would not be civil service employees.

Board Powers

An authority board could do any of the following:

- Prepare an analysis of water resource improvement and access to inland lakes issues taking place in the development area.
- Study and analyze the need for water resource improvements and access to inland lakes upon the development area.

- Develop long-range plans for water resource improvement and access to inland lakes within the district.
- Implement any plan of development for water resource improvement and access to inland lakes in the development area necessary to achieve the purposes of the proposed act in accordance with the authority's powers granted by it.
- Plan, propose, and implement an improvement to a public facility within the development area to comply with the barrier-free design requirements of the State Construction Code promulgated under the Single State Construction Code Act.
- Make and enter into contracts necessary or incidental to the exercise of its powers and the performance of its duties.
- Fix, charge, and collect fees, rents, and charges for the use of any facility, building, or property under its control or any part of the facility, building, or property, and pledge the fees, rents, and charges for the payment of revenue bonds issued by the authority.
- Lease, in whole or in part, any facility, building, or property under its control.
- Accept grants and donations of property, labor, or other things of value from a public or private source.
- Acquire and construct public facilities.

The bill would require the board to prepare a resource management plan in consultation with the Department of Environmental Quality, the Department of Natural Resources, or any other entity with expertise in water quality management and invasive species management.

The board also could plan and propose the construction, renovation, repair, remodeling, rehabilitation, restoration, preservation, or reconstruction of a public facility that was necessary or appropriate to the execution of a plan that, in the board's opinion, would aid in water resource improvement or access to inland lakes in the development area. The board would be encouraged to develop a plan that conserved the natural features, reduced impervious surfaces, and used landscaping and natural features to reflect the predevelopment site.

In addition, the board could improve land and construct, reconstruct, rehabilitate, restore and preserve, equip, clear, improve, maintain, and repair any public facility, building, and any necessary or desirable appurtenances to those buildings, and operate a water resource improvement, as the authority determined reasonably necessary to achieve the purposes of the proposed act, within the development area for the use, in whole or in part, of any public or private person or corporation, or a combination of them.

The board also could acquire by purchase or own, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests in the property, that the authority determined was reasonably necessary to achieve the act's purposes, and to grant or acquire licenses, easements, and options.

("Public facility" would mean a street, and any improvements to a street, including street furniture and beautification, park, parking facility, recreational facility, right of way, structure, waterway, bridge, lake, pond, canal, utility line or pipe, or building, including access routes designed and dedicated to use by the public generally, or used by a public agency, that was related to access to inland lakes or a water resource improvement. The term also would include a water resource improvement.)

Authority Financing

An authority's activities would have to be financed from one or more of the following sources:

- Donations to the authority for the performance of its functions.
- Money borrowed and to be repaid, as specified in the bill.
- Revenue from any property, building, or facility owned, leased, licensed, or operated by the authority or under its control, subject to the limitations imposed upon the authority by trusts or other agreements.
- Proceeds of a TIF plan established under the proposed act.
- Proceeds from a special assessment district created as provided by law.
- Money obtained from other sources approved by the municipality's governing body or otherwise authorized by law for use by the authority or the municipality to finance a development program.

Money the authority received that did not fall under the categories described above would have to be deposited immediately to the credit of the authority, subject to disbursement under the proposed act. Except as provided in the act, the municipality could not obligate itself, and could not be obligated, to pay any sums from public funds, other than money received by the municipality under the act, for or on account of the activities of the authority.

Borrowing and Bonding

An authority could borrow money and issue its negotiable revenue bonds under the Revenue Bond Act. With the approval of the municipality's governing body, the authority could borrow money and issue its revenue bonds or notes to finance all or part of the costs of water resource improvements in connection with the implementation of a development plan in the development area; or the refund, or refund in advance, of bonds or notes issued under the proposed act.

An authority could finance any of the following by issuing revenue bonds or notes:

- The cost of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing property in connection with the implementation of a development plan in the development area.
- Any engineering, architectural, legal, accounting, or financial expenses.
- The costs necessary or incidental to the borrowing of money.
- Interest on the bonds or notes during the period of construction.
- A reserve for payment of principal and interest on the bonds or notes.
- A reserve for operation and maintenance until sufficient revenue had developed.

An authority could secure the bonds and notes by mortgage, assignment, or pledge of the property and any money, revenue, or income received in connection with the property.

Bonds and notes issued under the proposed act would be exempt from all taxation in Michigan. The interest on them would be exempt from all taxation in Michigan, even if subject to Federal income tax.

A municipality would not be liable on bonds or notes of an authority, and the bonds or notes would not be a debt of the municipality. They would have to contain on their face a statement to that effect.

An authority's bonds and notes could be invested in by all public officers, state agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and could be deposited with and received by all public officers and the agencies and political subdivisions of this State for any purpose for which the deposit of bonds was authorized.

Tax Increment Financing

If an authority determined that it was necessary for the achievement of the proposed act's purposes, it could prepare a tax increment financing plan and submit the plan to the governing body of the municipality. The TIF plan would have to include a development plan, a detailed explanation of the TIF procedure, the maximum amount of bonded indebtedness to be incurred, and the duration of the program, and would have to be in compliance with the act. The plan would have to contain a statement of the estimated impact of the TIF plan on the assessed values of all taxing jurisdictions in which the development area was located. The plan could provide for the use of part or all of the captured assessed value, but the portion intended to be used by the authority would have to be stated clearly in the TIF plan. The authority or municipality could exclude from the captured assessed value growth in property value resulting solely from inflation, and the plan would have to set forth the method for excluding such growth.

Approval of a TIF plan would have to comply with the bill's notice, hearing, and disclosure provisions for the adoption of a development plan. If the development plan were part of the TIF plan, only one hearing and approval procedure would be required.

Before the public hearing on a TIF plan, the governing body would have to provide a reasonable opportunity to the taxing jurisdictions levying taxes subject to capture to meet with the governing body. The authority would have to inform the taxing jurisdictions fully of the fiscal and economic implications of the proposed development area. The taxing jurisdictions could present their recommendations at the public hearing on the TIF plan. The authority could enter into agreements with the taxing jurisdictions and the governing body of the municipality in which the development area was located to share a portion of the captured assessed value of the development area.

A TIF plan could be modified if the modification were approved by the governing body upon notice and after public hearings and agreements as required for approval of the original plan.

Within 60 days after the public hearing, the governing body in a taxing jurisdiction levying ad valorem property taxes that otherwise would be subject to capture could exempt its taxes from capture by adopting a resolution to that effect and filing a copy with the clerk in the municipality proposing to create the authority. If the governing body levied a separate millage for public library purposes, at the request of the public library board, that separate millage would be exempt from the capture. The resolution would take effect when filed with the clerk, and would remain effective until a copy of a resolution rescinding it was filed with the clerk.

Municipal and county treasurers would have to transmit tax increment revenue to the authority. The authority would have to spend the revenue for the development program under the terms of the TIF plan. Unused funds would revert proportionately to the respective taxing bodies. The revenue could not be used to circumvent existing property tax limitations. The municipality's governing body could abolish the TIF plan if it found that the purposes for which it was established were accomplished. The plan could not be abolished, however, until the principal of, and interest on, bonds issued under the proposed act had been paid or funds sufficient to make the payment had been segregated.

An authority annually would have to submit to the governing body of the municipality and the State Tax Commission a report on the status of the TIF account. The report would have to include the following:

- The amount and source of revenue in the account.
- The amount in any bond reserve account.
- The amount and purpose of expenditures from the account.
- The amount of principal and interest on any outstanding bonded indebtedness.
- The initial assessed value of the project area.
- The captured assessed value retained by the authority.
- The tax increment revenue received.
- The number of public facilities developed.
- The number of water resource improvements made.
- A brief description of each water resource improvement made within the district.
- Any additional information the governing body considered necessary.

By resolution of its governing body, an authority could authorize, issue, and sell tax increment bonds subject to the limitations set forth in the bill to finance the development program of the TIF plan. The bonds would have to pledge solely the tax increment revenue of a development area in which the project was located or a development area from which tax increment revenue could be used for this project, or both. In addition or in the alternative, the bonds could be secured by any other revenue identified in the bill as sources of financing for activities of the authority that the authority pledged specifically in the resolution. The full faith and credit of the municipality, however, could not be pledged to secure the bonds, except as otherwise provided. The bond issue could include a sum sufficient to pay interest on the tax increment bonds until full development of tax increment revenue from the project, as well as a sum to provide a reasonable reserve for payment of principal and interest on the bonds.

The municipality, by majority vote of the members of its governing body, could make a limited tax pledge to support the authority's tax increment bonds or notes or, if authorized by the municipality's voters, could pledge its unlimited tax full faith and credit for the payment of the principal of and interest on the authority's tax increment bonds or notes.

Development Plan

If an authority's board decided to finance a project in a development area by the use of revenue bonds or tax increment financing, it would have to prepare a development plan. The plan would have to contain all of the following:

- The designation of boundaries of the development area in relation to highways, streets, streams, lakes, other bodies of water, or otherwise.
- The location and extent of existing streets and other public facilities within the development area, designating the location, character, and extent of the categories of public and private land uses then existing and proposed for the development area, including residential, commercial, industrial, educational, and other uses, and including a legal description of the development area.
- A description of existing improvements in the development area to be demolished, repaired, or altered, a description of any repairs and alterations, and an estimate of the time required for completion.
- The location, extent, character, and estimated cost of the improvements including rehabilitation contemplated for the development area and an estimate of the time required for completion.
- A statement of the construction or stages of construction planned, and the estimated time of completion of each stage.
- A description of any parts of the development area to be left as open space and the use contemplated for the space.
- A description of any portions of the development area that the authority desired to sell, donate, exchange, or lease to or from the municipality and the proposed terms.
- A description of desired zoning changes and changes in streets, street levels, intersections, or utilities.
- An estimate of the cost of the development, a statement of the proposed method of financing the development, and the ability of the authority to arrange the financing.
- Designation of the person or people, natural or corporate, to whom all or a portion of the development was to be leased, sold, or conveyed in any manner and for whose benefit the project was being undertaken, if that information were available to the authority.
- The procedures for bidding for the lease, purchase, or conveyance in any manner of all or a portion of the development upon its completion, if there were no express or implied agreement between the authority and individuals or entities that all or part of the development would be leased, sold, or conveyed in any manner to them.
- The requirement that amendments to an approved development plan or tax increment plan be submitted by the authority to the governing body for approval or rejection.
- The water resource improvements that would be made in the development area.
- Other material that the authority, local public agency, or governing body considered pertinent.
- Based on consultation with the affected state and federal authorities, an identification of the permits the board believed necessary to complete the proposed public facility and an explanation of how it would meet the requirements necessary for issuance of each permit.

Before adopting an ordinance approving a development plan or a TIF plan, the governing body would have to hold a public hearing. Notice of the hearing would have to be published, posted, and mailed as specified in the bill.

After the hearing, the governing body would have to determine whether the plan constituted a public purpose. If it determined that the plan did so, the governing body by ordinance would have to approve or reject the plan, or approve it with modification, based on the following considerations:

- The findings and recommendations of a Development Area Citizens Council, if one were formed.
- Whether the plan contained all of the required information.
- Whether the proposed method of financing the development was feasible and the authority had the ability to arrange the financing.
- Whether the development was reasonable and necessary to carry out the proposed act's purposes.
- Whether the land included within the development area to be acquired was reasonably necessary to carry out the purposes of the plan and the act in an efficient and economically satisfactory manner.
- Whether the development plan was in reasonable accord with the municipality's land use plan.
- Whether public services, such as fire and police protection and utilities, were or would be adequate to service the project area.
- Whether changes in zoning, streets, street levels, intersections, and utilities were reasonably necessary for the project and for the municipality.

Authority Budget

The director of an authority would have to submit to the board a budget for the authority's operation for each fiscal year before the beginning of that fiscal year. The budget would have to be prepared in the manner and contain the information required of municipal departments. After review by the board, the budget would have to be submitted to the governing body, which would have to approve the budget before the board could adopt it. Unless authorized by the governing body or the proposed act, municipality funds could not be included in the authority's budget.

The governing body could assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds against the funds of the authority, other than those committed, which the board would have to pay annually pursuant to an appropriate item in its budget.

All expense items of the authority would have to be publicized monthly and the financial records always would have to be open to the public.

Dissolution

The governing body of a municipality would have to dissolve an authority by ordinance after the authority had completed its purpose. The authority's property and assets remaining after the satisfaction of its obligations would belong to the municipality.

HOUSE COMMITTEE ACTION:

Working with the Senate sponsor of the legislation, the House Committee on the New Economy and Quality of Life adopted two amendments to the Senate-passed version of the bill.

First, the definition of "water resource improvement" was narrowed to apply only to "sewer systems that service existing structures that have failing on-site disposal," and to storm water

systems "that service existing infrastructure." (The Senate-passed version would have allowed for the replacement of any failing on-site disposal systems, and payment for any storm water system.)

Second, the Tax Increment Finance Authority Board would be required to prepare a water resources management plan in consultation with the Department of Environmental Quality, the Department of Natural Resources, or any other entity with expertise in water quality management and invasive species management.

ARGUMENTS:

For:

The bill would provide municipalities with a much-needed economic development tool to improve water resources and access to inland lakes, increase property value and property tax revenue, and attract new residents and businesses. Tax increment financing is a proven method for a community to create a revenue stream to invest in its own development, and has long been used for economic development in commercial and industrial areas. While the development of new and expanded business and industrial activity is highly beneficial to a community, healthy inland lakes also are an essential component of economic vitality in some cities, villages, and townships. Water-based recreational opportunities can draw residents and tourists who will shop, dine, and otherwise conduct business in the municipality. Enhancing the health of and access to inland lakes, then, also encourages economic growth. By authorizing cities, villages, and townships to create water resource improvement authorities and use TIF programs, the bill would provide a mechanism for a city, village, or township to reverse problems with aquatic nuisance species in its lakes and inadequate sewer systems, and promote the well-being of the environment and economic development in the community.

Against:

The bill is a good one, but it should be amended to narrow its application, thereby ensuring it is properly used. Critics say that three amendments are necessary. First, the TIF district limit that allows a district to extend up to one-mile back from the lakeshore may work well in Grand Traverse County, but if applied in the densely populated lake district of Oakland County a single TIF district could overlap entire small villages and towns. Further, because of the prevalence of small lakes, TIF districts could overlap and envelop each other. In places like Oakland County, the geographic limit of the TIF district should be a half-mile, at most. An amendment to vary the bill's application depending on a county's population might well be appropriate. Second, the bill should state, explicitly, a clear public purpose. To begin, it should be amended to ensure that the lakes that would be improved using public tax dollars must also be publicly accessible. Third, lake associations and/or local governments currently design special assessment districts to improve lakes. In that way, the cost of the improvements is borne by those whose property abuts the lakes and whose property values are affected, rather than by "back-lotters" living off the shoreline and without lake-frontage or immediate access. Consequently, the bill should be amended to prohibit the creation of a TIF district where a special lake assessment is already underway. The amendment should also state that TIF districts do not substitute for private lake associations' special assessment districts.

POSITIONS:

The Department of Environmental Quality supports the bill. (2-7-08)

The Michigan Municipal League supports the bill. (2-7-08)

The Michigan Townships Association supports the bill. (2-7-08)

The Department of Treasury is neutral on the bill. (2-7-08)

Legislative Analyst: J. Hunault
Fiscal Analyst: Viola Bay Wild

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.